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7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. *2010-56*

12 **MARIA A. DIAZ**
14246 Allegan Street
13 Whittier, CA 90604

A C C U S A T I O N

14 Registered Nurse License Number 640938

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN, ("Complainant") brings this Accusation
20 solely in her official capacity as the Interim Executive Officer of the Board of Registered Nursing
21 ("Board"), Department of Consumer Affairs.

22 2. On or about July 22, 2004, the Board issued Registered Nurse License
23 Number 640938 to Maria A. Diaz ("Respondent"). The license will expire on July 31, 2010,
24 unless renewed.

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STATUTORY PROVISIONS

3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.

4. Code section 2725 states, in pertinent part:

(b) The practice of nursing within the meaning of this chapter means those functions, including basic health care, that help people cope with difficulties in daily living that are associated with their actual or potential health or illness problems or the treatment thereof, and that require a substantial amount of scientific knowledge or technical skill, including all of the following:

(1) Direct and indirect patient care services that ensure the safety, comfort, personal hygiene, and protection of patients; and the performance of disease prevention and restorative measures.

(2) Direct and indirect patient care services, including, but not limited to, the administration of medications and therapeutic agents, necessary to implement a treatment, disease prevention, or rehabilitative regimen ordered by and within the scope of licensure of a physician, dentist, podiatrist, or clinical psychologist, as defined by Section 1316.5 of the Health and Safety Code.

(4) Observation of signs and symptoms of illness, reactions to treatment, general behavior, or general physical condition, and (A) determination of whether the signs, symptoms, reactions, behavior, or general appearance exhibit abnormal characteristics, and (B) implementation, based on observed abnormalities, of appropriate reporting, or referral, or standardized procedures, or changes in treatment regimen in accordance with standardized procedures, or the initiation of emergency procedures.

(c) "Standardized procedures," as used in this section, means either of the following:

(1) Policies and protocols developed by a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code through collaboration among administrators and health professionals including physicians and nurses.

(2) Policies and protocols developed through collaboration among administrators and health professionals, including physicians and nurses, by an organized health care system which is not a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

The policies and protocols shall be subject to any guidelines for standardized procedures that the Division of Licensing of the Medical Board of California and the Board of Registered Nursing may jointly promulgate. If promulgated, the guidelines shall be administered by the Board of Registered Nursing.

1 (d) Nothing in this section shall be construed to require approval of
2 standardized procedures by the Division of Licensing of the Medical Board of
California, or by the Board of Registered Nursing.

3 (e) No state agency other than the board may define or interpret the
4 practice of nursing for those licensed pursuant to the provisions of this chapter, or
develop standardized procedures or protocols pursuant to this chapter, unless so
5 authorized by this chapter, or specifically required under state or federal statute.
"State agency" includes every state office, officer, department, division, bureau,
6 board, authority, and commission.

7 5. Code section 2764 provides, in pertinent part, that the expiration of a
8 license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
9 against the licensee or to render a decision imposing discipline on the license. Under Code
10 section 2811, subdivision (b), the Board may renew an expired license at any time within eight
11 years after the expiration.

12 6. Code section 2761 states, in pertinent part:

13 The board may take disciplinary action against a certified or licensed nurse
14 or deny an application for a certificate or license for any of the following:

15 (a) Unprofessional conduct, which includes, but is not limited to, the
following:

16 (1) Incompetence, or gross negligence in carrying out usual certified or
17 licensed nursing functions.

18 REGULATORY PROVISIONS

19 7. California Code of Regulations, title 16, section
20 ("Regulation") 1443 states:

21 As used in Section 2761 of the code, "incompetence" means the
lack of possession of or the failure to exercise that degree of learning, skill, care
22 and experience ordinarily possessed and exercised by a competent registered nurse
as described in Section 1443.5.

23 8. Regulation section 1443.5 states:

24 A registered nurse shall be considered to be competent when he/she
consistently demonstrates the ability to transfer scientific knowledge from social,
25 biological and physical sciences in applying the nursing process, as follows:

26 (1) Formulates a nursing diagnosis through observation of the client's
physical condition and behavior, and through interpretation of information
27 obtained from the client and others, including the health team.

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1 (2) Formulates a care plan, in collaboration with the client, which
2 ensures that direct and indirect nursing care services provide for the client's safety,
3 comfort, hygiene, and protection, and for disease prevention and restorative
4 measures.

5 (3) Performs skills essential to the kind of nursing action to be taken,
6 explains the health treatment to the client and family and teaches the client and
7 family how to care for the client's health needs.

8 (6) Acts as the client's advocate, as circumstances require, by initiating
9 action to improve health care or to change decisions or activities which are against
10 the interests or wishes of the client, and by giving the client the opportunity to
11 make informed decisions about health care before it is provided.

12 COST RECOVERY

13 9. Code section 125.3 provides, in pertinent part, that the Board may request
14 the administrative law judge to direct a licensee found to have committed a violation or
15 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
16 and enforcement of the case.

17 BACKGROUND

18 10. At all times herein mentioned, Respondent was employed as a nurse in the
19 labor and delivery unit at Whittier Hospital Medical Center ("WHMC") in Whittier, California.

20 11. On or about February 23, 2005, at approximately 0530 hours, Patient A
21 was admitted to WHMC for a scheduled elective cesarean section for a macrosomia (large) baby.
22 Respondent assumed care of Patient A at approximately 0625 hours. Between 0604 hours and
23 0615 hours, before completing her shift, the nurse charged with the care of Patient A related to
24 Respondent that fetal monitoring indicated variability and deceleration.¹ Respondent did not
25 immediately call Patient A's attending physician upon learning of the ominous fetal monitor
26 indications, and a call was not placed until 0631 hours. By 0645 hours, Respondent paged the
27 attending physician, as he had not responded to the call at 0631 hours. At approximately 0700
28 hours, Patient A's attending physician responded to the summons and Respondent relayed to him
the condition of Patient A, the fetal heart rate, decelerations and variability. The attending
physician arrived approximately ten minutes later, the anesthesiologists were notified of the

1. Variability determines if the fetus is receiving sufficient oxygen, and is an indication of fetal stress.

1 impending cesarean, and at 0720 hours, Patient A was transferred to the operating room. Fetal
2 monitoring was suspended until the start of surgery at 0749 hours.² An unresponsive infant was
3 delivered at 0758 hours, and pronounced dead at 0820 hours.

4 **FIRST CAUSE FOR DISCIPLINE**

5 (Incompetence)

6 12. Respondent's license is subject to disciplinary action under Code section
7 2761, subdivision (a)(1), on the grounds of incompetence, in that on or about February 23, 2005,
8 while on duty as a registered nurse at WHMC, Respondent committed acts constituting
9 incompetence within the meaning of Regulation section 1443, as more fully set forth in
10 paragraph 11, above, as follows:

11 a. Respondent failed to promptly notify Patient A's attending physician of
12 fetal monitor indications that the fetus was under stress.

13 b. Respondent failed to expedite the preparation of Patient A for an
14 expeditious delivery.

15 c. Respondent failed to expedite the transfer Patient A to the operating room.

16 d. Respondent failed to expedite notification to the anesthesia department of
17 Patient A's immediate need for surgery.

18 e. Respondent failed to continue monitoring the fetus while Patient A was in
19 the operating room prior to her surgery.

20 f. Respondent was unaware of WHMC's policy that the registered nurse in
21 WHMC's labor and delivery department is responsible for continuous fetal monitoring where the
22 fetus may be compromised.

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27 2. According to WHMC's *Standard of Care: Assessment/Screening the Pregnant Patient Presenting to*
28 *Hospital with Questionable Labor Status, Policy #300*, "Fetal heart rate assessment by continuous electronic fetal
monitor will be initiated within 20 minutes of patient's placement in the Labor and Delivery area."

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